Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author:	Figueroa	Analyst:	Kimberly Pantoja	Bill Number:	SB 17
Related Bills:	See Legislative History	Telephone:	845-4786	Introduction Date:	12/07/98
		Attorney:	Doug Bramhall	Sponsor:	

SUBJECT: Employer Provided Public Transit Passes Credit

SUMMARY

Under the Personal Income Tax Law (PITL) and the Bank and Corporation Tax Law (B&CTL), this bill would allow a credit equal to 40% of the cost paid or incurred by an employer for providing subsidized public transit passes to an employee.

EFFECTIVE DATE

This bill is a tax levy and would be effective immediately upon enactment. It would apply to taxable or income years beginning on or after January 1, 1999, and before January 1, 2004.

LEGISLATIVE HISTORY

AB 1463 (Stats. 1989, Ch. 1227), AB 29 (Stats. 1990, Ch. 30), AB 913 (95/96), AB 171 (1997), AB 1702 (97/98).

PROGRAM HISTORY

Prior state law allowed employers a ridesharing tax credit with two components. Employers were allowed a tax credit equal to 10% to 40% of the cost of providing subsidized public transit passes to employees, depending upon whether the employer offered free or subsidized parking. The second component was a tax credit for the purchase or lease of shuttle or commuter vehicles as part of an employer-sponsored ridesharing incentive program. The credit was 20% for an employer with 200 or more employees and 30% for an employer with fewer than 200 employees.

Prior state law also provided a transit-related tax credit to employees equal to 40% of the subscription costs paid or incurred for participation in a non-employer-sponsored vanpool program.

The above credits were allowed for taxable or income years beginning on or after January 1, 1989, and before January 1, 1996.

SPECIFIC FINDINGS

Federal law does not provide a tax credit for employee or employer participation in a ridesharing or vanpool program. However, to the extent that a ridesharing or vanpool program is a necessary business expense, any cost incurred by employers would be deductible.

Board Position:			Department Director	Date
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Federal and state laws allow employers to deduct the cost of providing transit passes to employees as a business expense.

Existing federal and state laws allow employees certain exclusions from gross income for the value of employer-provided commuter transportation, transit passes, or qualified parking. Employees generally cannot deduct their regular costs of commuting to and from their place of business under either federal or state law.

Current state law allows an employee to exclude from gross income compensation or the fair market value of any benefit (except salary or wages) received from an employer for participation in any ridesharing program in California including the value of a monthly transit pass for use by the employee or his or her dependents.

Under the PITL and B&CTL, **this bill** would allow a credit equal to 40% of the cost paid or incurred by an employer for providing subsidized public transit passes to an employee.

For purposes of **this bill**:

- "employer" would mean a taxpayer, except a governmental agency, who employs an employee and for whom services are performed by that employee; and
- "employee" would mean an individual residing in California and employed by the taxpayer who performs at least 10 hours per week of service for the taxpayer for remuneration.

The credit allowed by **this bill** would be in lieu of any deduction to which the taxpayer would otherwise be entitled for costs on which the credit is based.

In the case where the credit allowed exceeds the amount of tax, the credit could be carried forward in the following "years" and the next 10 "succeeding years" if necessary, until exhausted.

Since **this bill** does not specify otherwise, the general rules in income tax law regarding the division of credits between taxpayers who share in the costs would apply. This credit would not reduce regular tax below tentative minimum tax for alternative minimum tax purposes.

The California Research Bureau would be required to submit a report to the Legislature on this credit by January 1, 2003. This provision is not discussed in this analysis as it does not impact the department.

Policy Consideration

By disallowing a deduction that is allowed by federal law, the bill would create a state/federal difference which requires adjustments to income. However, allowing both the deduction and the credit would provide a double tax benefit.

This bill would require that an employee reside in California to make a taxpayer eligible for a credit. A requirement that an employee reside in California may be subject to constitutional challenge under the Commerce Clause of the United States Constitution. A different method might require that employees be employed in California for the employer to claim the credit.

Implementation Consideration

Implementation of this bill would occur during the department's normal annual system update.

Technical Considerations

The word "of" in front of the description of the amount of credit that would be allowed under both PITL and B&CTL is unnecessary and differs from standard credit language. Amendments 1 and 3 would delete this unnecessary and potentially confusing word.

The language regarding the number of years that the credit may be carried over is unclear and potentially confusing. Amendments 2 and 4 would clarify that the credit may be carried over for 11 years, or until exhausted, whichever occurs first.

FISCAL IMPACT

Departmental Costs

This bill would not significantly impact the department's costs.

Tax Revenue Estimate

This bill is estimated to impact PIT and B&CT revenue as shown in the following table.

Fiscal Year Cash Flow Effective 1/1/99 Enactment Assumed After June 30, 1999 $ Millions		
1999-0	2000-01	2001-02
($2)	($2)	($2)

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this measure.

Tax Revenue Discussion

The revenue impact of this bill will be determined by the number of employers that are providing subsidized transit passes and the average amount of credit applied.

The above estimates are based on state tax return data for the previous transit pass tax credit of an average of 30% credit amount. The previous impact was increased to reflect the 40% credit allowed in the bill. The total credit amount was grown to reflect 5% annual growth rate and cost changes in transit passes.

BOARD POSITION

Pending.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO SB 17
As Introduced December 7, 1998

AMENDMENT 1

On page 2, line 2, strike "of".

AMENDMENT 2

On page 2, strike lines 7 through 9 and insert:

"net tax" in the following year and succeeding 10 years if necessary, or until the credit has been exhausted, whichever occurs first.

AMENDMENT 3

On page 2, line 29, strike "of".

AMENDMENT 4

On page 2, strike lines 34 and 35, and insert:

in the following year and succeeding 10 years if necessary, or until the credit has been exhausted, whichever occurs first.